

**UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT
AGENCY APPEAL PRE-ARGUMENT STATEMENT (FORM C-A)**

☐ APPLICATION FOR ENFORCEMENT

☐ PETITION FOR REVIEW

1. SEE NOTICE ON REVERSE.

2. PLEASE TYPE OR PRINT.

3. STAPLE ALL ADDITIONAL PAGES.

| | | | | | | | | | | | | | | | |
|---|--|--|--|---|--|-----------------|----------|----------------|----------|---------|---|--|--|--|--|
| CAPTION: NATIONAL LABOR RELATIONS BOARD V. TEAMSTERS LOCAL 456, INTERNATIONAL BROTHERHOOD OF TEAMSTERS | | AGENCY NAME: National Labor Relations Bd | | AGENCY NO.: 02-CP-189159 et al. | | | | | | | | | | | |
| | | DATE THE ORDER UPON WHICH REVIEW OR ENFORCEMENT IS SOUGHT WAS ENTERED BELOW: December 22, 2017 | | ALIEN NO : (Immigration Only) | | | | | | | | | | | |
| | | DATE THE PETITION OR APPLICATION WAS FILED: | | Is this a cross-petition for review / cross-application for enforcement? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO | | | | | | | | | | | |
| Contact Information for Petitioner(s) Attorney: | <table style="width:100%; border: none;"> <tr> <td style="width:25%;">Counsel's Name:</td> <td style="width:25%;">Address:</td> <td style="width:25%;">Telephone No.:</td> <td style="width:25%;">Fax No.:</td> <td style="width:25%;">E-mail:</td> </tr> <tr> <td colspan="5"> Linda Dreeben National Labor Relations Board Tel: (202) 273-2960 1015 Half Street, S.E. Fax: (202) 273-0191 Washington, D.C. 20570 Email: AppellateCourt@nlrb.gov </td> </tr> </table> | | | | | Counsel's Name: | Address: | Telephone No.: | Fax No.: | E-mail: | Linda Dreeben National Labor Relations Board Tel: (202) 273-2960 1015 Half Street, S.E. Fax: (202) 273-0191 Washington, D.C. 20570 Email: AppellateCourt@nlrb.gov | | | | |
| Counsel's Name: | Address: | Telephone No.: | Fax No.: | E-mail: | | | | | | | | | | | |
| Linda Dreeben National Labor Relations Board Tel: (202) 273-2960 1015 Half Street, S.E. Fax: (202) 273-0191 Washington, D.C. 20570 Email: AppellateCourt@nlrb.gov | | | | | | | | | | | | | | | |
| Contact Information for Respondent(s) Attorney: | <table style="width:100%; border: none;"> <tr> <td style="width:25%;">Counsel's Name:</td> <td style="width:25%;">Address:</td> <td style="width:25%;">Telephone No.:</td> <td style="width:25%;">Fax No.:</td> <td style="width:25%;">E-mail:</td> </tr> <tr> <td colspan="5"> Jonathan Bardavid, Esq. 1311 Mamaroneck Ave. Ste 170 Tel: (914) 949-9075 Trivella & Forte, LLP White Plains, NY 10605 Fax: (914) 949-4972 Email: jonathan@tfsllp.com </td> </tr> </table> | | | | | Counsel's Name: | Address: | Telephone No.: | Fax No.: | E-mail: | Jonathan Bardavid, Esq. 1311 Mamaroneck Ave. Ste 170 Tel: (914) 949-9075 Trivella & Forte, LLP White Plains, NY 10605 Fax: (914) 949-4972 Email: jonathan@tfsllp.com | | | | |
| Counsel's Name: | Address: | Telephone No.: | Fax No.: | E-mail: | | | | | | | | | | | |
| Jonathan Bardavid, Esq. 1311 Mamaroneck Ave. Ste 170 Tel: (914) 949-9075 Trivella & Forte, LLP White Plains, NY 10605 Fax: (914) 949-4972 Email: jonathan@tfsllp.com | | | | | | | | | | | | | | | |
| JURISDICTION OF THE COURT OF APPEALS (provide U.S.C. title and section): | APPROX. NUMBER OF PAGES IN THE RECORD: | APPROX. NUMBER OF EXHIBITS IN THE RECORD: | Has this matter been before this Circuit previously? <input type="checkbox"/> Yes <input type="checkbox"/> No If Yes, provide the following: Case Name: 2d Cir. Docket No.: Reporter Citation: (i.e., F.3d or Fed. App.) | | | | | | | | | | | | |
| ADDENDUM "A": COUNSEL MUST ATTACH TO THIS FORM: (1) A BRIEF, BUT NOT PERFUNCTORY, DESCRIPTION OF THE NATURE OF THE ACTION; (2) THE RESULT BELOW; AND (3) A COPY OF ALL RELEVANT OPINIONS/ORDERS FORMING THE BASIS FOR THIS PETITION FOR REVIEW OR APPLICATION FOR ENFORCEMENT. | | | | | | | | | | | | | | | |
| ADDENDUM "B": COUNSEL MUST ATTACH TO THIS FORM: (1) THE RELIEF REQUESTED; (2) A LIST OF THE PROPOSED ISSUES; AND (3) THE APPLICABLE APPELLATE STANDARD OF REVIEW FOR EACH PROPOSED ISSUE. | | | | | | | | | | | | | | | |
| PART A: STANDING AND VENUE | | | | | | | | | | | | | | | |
| <p align="center"><u>STANDING</u></p> PETITIONER / APPLICANT IS: <input checked="" type="checkbox"/> AGENCY <input type="checkbox"/> OTHER PARTY <input type="checkbox"/> NON-PARTY (SPECIFY STANDING): | | | <p align="center"><u>VENUE</u></p> COUNSEL MUST PROVIDE IN THE SPACE BELOW THE FACTS OR CIRCUMSTANCES UPON WHICH VENUE IS BASED: Venue is proper because unfair labor practices occurred in New York. | | | | | | | | | | | | |

IMPORTANT. COMPLETE AND SIGN REVERSE SIDE OF THIS FORM.

PART B: NATURE OF ORDER UPON WHICH REVIEW OR ENFORCEMENT IS SOUGHT
(Check as many as apply)

TYPE OF CASE:

| | | | |
|---------|---------------------------------------|-------|--|
| _____ | ADMINISTRATIVE REGULATION/ RULEMAKING | _____ | IMMIGRATION-includes denial of an asylum claim |
| _____ | BENEFITS REVIEW | _____ | IMMIGRATION-does NOT include denial of an asylum claim |
| X _____ | UNFAIR LABOR | _____ | TARIFFS |
| _____ | HEALTH & SAFETY | _____ | OTHER: |
| _____ | COMMERCE | | (SPECIFY) |
| _____ | ENERGY | | |

1. Is any matter relative to this petition or application still pending below? ☐ Yes, specify: _____ ☒ No

2. To your knowledge, is there any case presently pending or about to be brought before this Court or another court or administrative agency which:

(A) Arises from substantially the same case or controversy as this petition or application ? ☐ Yes ☒ No

(B) Involves an issue that is substantially similar or related to an issue in this petition or application ? ☐ Yes ☒ No

If yes, state whether ☐ "A," or ☐ "B," or ☐ both are applicable, and provide in the spaces below the following information on the *other* action(s):

| | | | |
|----------------------------------|------------|-----------|------------------|
| Case Name: | Docket No. | Citation: | Court or Agency: |
| Name of Petitioner or Applicant: | | | |

Date: 01/09/2018

Signature of Counsel of Record: s/Linda Dreeben

NOTICE TO COUNSEL

Once you have filed your Petition for Review or Application for Enforcement, you have only 14 days in which to complete the following important steps:

1. Complete this Agency Appeal Pre-Argument Statement (Form C-A); serve it upon your adversary, and file it with the Clerk of the Second Circuit in accordance with LR 25.1.
2. Pay the \$500 docketing fee to the Clerk of the Second Circuit, unless you are authorized to prosecute the appeal without payment.

PLEASE NOTE: IF YOU DO NOT COMPLY WITH THESE REQUIREMENTS WITHIN 14 CALENDAR DAYS, YOUR PETITION FOR REVIEW OR APPLICATION FOR ENFORCEMENT WILL BE DISMISSED. SEE LOCAL RULE 12.1.

ADDENDUM “A”

(1) A Brief Description of the Nature of the Action:

This is an action to enforce an NRLB order. On December 22, 2017, the Board entered an order against Respondent pursuant to a stipulation authorizing the Board to enter an order embodying its terms. The Board’s order does not vary from those terms. Paragraph VII of the settlement agreement authorized the Board to apply to an appropriate U.S. Court of Appeals for a judgment enforcing the Board’s order and provided that Respondent “waives all defenses to the entry of the judgment” The Board, pursuant to the terms of the settlement, seeks a judgment enforcing the Board’s order in full.

(2) The result below:

The Board entered an order against Respondent pursuant to a stipulation authorizing the Board to enter an order embodying its terms.

(3) Relevant Opinions and Orders: Attached.

ADDENDUM “B”

(1) Relief requested:

Enforcement of the December 22, 2017, Decision and Order of the National Labor Relations Board.

(2) List of Proposed Issues:

The Board, pursuant to the terms of the stipulation, is entitled to summary entry of a judgment enforcing its order against Respondent.

(3) Applicable standard of review:

The Board is entitled to enforcement because Respondent has expressly consented to entry of this judgment in a stipulation that Respondents entered into with the Board.

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

**TEAMSTERS LOCAL 456, INTERNATIONAL
BROTHERHOOD OF TEAMSTERS**

and

TITAN CONCRETE, INC.

**Cases 02-CP-189159
02-CP-190239
02-CC-190242**

DECISION AND ORDER

Statement of the Cases

On May 9, 2017, Teamsters Local 456, International Brotherhood of Teamsters (the Respondent) and the General Counsel of the National Labor Relations Board entered into a Formal Settlement Stipulation, subject to the Board's approval, providing for the entry of a consent order by the Board and a consent judgment by any appropriate United States Court of Appeals.¹ The Respondent waived all further and other proceedings before the Board to which it may be entitled under the National Labor Relations Act and the Board's Rules and Regulations, and the Respondent waived its right to contest the entry of a consent judgment or to receive further notice of the application therefor.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Formal Settlement Stipulation is approved and made a part of the record, and the proceeding is transferred to and continued before the Board in Washington, D.C., for the entry of a Decision and Order pursuant to the provisions of the Formal Settlement Stipulation.

Based on the Formal Settlement Stipulation and the entire record, the Board makes the following

¹ The Charging Party declined to enter into the Formal Settlement Stipulation, and has filed objections to the Stipulation with the Board. The Regional Director and the General Counsel recommend approval of the settlement on the grounds that, inter alia, it fully remedies all of the allegations of the consolidated complaint and provides for the entry of Board and court orders. We have carefully considered the Charging Party's objections to the settlement, and we conclude that it would effectuate the purposes and policies of the Act to approve the settlement agreement.

Findings of Fact

1. The Employer's business

(a) At all material times, Titan Concrete, Inc. (Titan), a New York corporation with an office and place of business located at 145 Huguenot Street, New Rochelle, New York, has been engaged in the manufacture, non-retail sale, and distribution of ready mixed concrete to commercial entities.

(b) Annually, Titan, in conducting its business operations described above, purchased and received at its New York facility goods valued in excess of \$50,000 directly from points outside the State of New York.

(c) At all material times, Titan has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The labor organization involved

Teamsters Local 456, International Brotherhood of Teamsters, is a labor organization within the meaning of Section 2(5) of the Act.

3. The bargaining unit

The following employees of Titan (the unit) constitute a unit appropriate for collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time drivers, mechanics and helpers.

ORDER

Based on the above findings of fact, the Formal Settlement Stipulation, and the entire record, and pursuant to Section 10(c) of the National Labor Relations Act, the National Labor Relations Board orders that:

The Respondent, Teamsters Local 456, International Brotherhood of Teamsters, Elmsford, New York, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Inducing or encouraging any individual employed by ASF Construction and Excavation Corporation (ASF) and Specialty Construction System (SCS) or any other person engaged in commerce or in an industry affecting commerce, to engage in a strike or a refusal in the course of his or her employment to perform services where an object thereof is to force ASF and SCS, or any other person, to cease doing business with Titan Concrete, Inc. (Titan).

(b) Picketing, threatening to picket, or in any other manner seeking to restrain or coerce SCS, ASF, Mill Creek Residential Corporation (Mill Creek), GFX Site Development (GFX), SYP Industries (SYP), or any other person engaged in commerce or in an industry affecting commerce, where an object thereof is to force SCS, ASF, Mill Creek, GFX, SYP, or any other person, to cease doing business with Titan.

(c) Picketing, threatening to picket, or in any other manner seeking to restrain or coerce Titan where an object thereof is forcing or requiring Titan to recognize or bargain with it as the collective-bargaining representative of its employees or for the purpose of forcing or requiring employees of Titan to accept or select it as their collective-bargaining representative, where Titan has lawfully recognized United Service Workers Union, IUJAT, Local 339, or any other labor organization other than it, and a question concerning representation of said employees may not appropriately be raised under Section 9(c) of the Act.

(d) Picketing, threatening to picket, or in any other manner seeking to restrain or coerce Titan where an object of such picketing is forcing or requiring Titan to recognize or bargain with it as the collective-bargaining representative of the employees of Titan at a time when it is not certified as such representative and where such picketing has been conducted without a petition under Section 9(c) of the Act being filed within a reasonable period of time not to exceed 30 days from the start of such picketing.

(e) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) For a 15-day period commencing from the date that the Board approves this stipulation, we will refrain from resuming any lawful conduct with respect to our labor dispute with Titan.

(b) Within 14 days after service by the Region, post at its union office in Elmsford, New York, copies of the attached notice marked "Appendix A." Copies of the notice, on forms provided by the Regional Director for Region 2, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to members are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Sign and return to the Regional Director sufficient copies of the notice for posting by ASF Construction and Excavation Corporation, GFX Site Development, SYP Industries, Specialty Construction System, and Mill Creek Residential Corporation, if willing, at all places where notices to employees are customarily posted.

(d) Within 21 days after service by the Region, file with the Regional Director for Region 2 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C., December 22, 2017

| | |
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| _____ Mark Gaston Pearce, | Member |
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| _____ Lauren McFerran, | Member |
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| _____ William J. Emanuel, | Member |
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(SEAL)

NATIONAL LABOR RELATIONS BOARD

APPENDIX A

NOTICE TO EMPLOYEES AND MEMBERS POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

PURSUANT TO A STIPULATION PROVIDING FOR A BOARD ORDER AND A CONSENT JUDGMENT OF ANY APPROPRIATE UNITED STATES COURT OF APPEALS

FEDERAL LAW GIVES YOU THE RIGHT TO:

Form, join, or assist a union
Choose a representative to bargain on your behalf with your employer
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities.

WE WILL NOT do anything to prevent you from exercising the above rights.

WE WILL NOT induce or encourage any individual employed by ASF Construction and Excavation Corporation (ASF) and Specialty Construction System (SCS), or any other person engaged in commerce or in an industry affecting commerce, to engage in a strike or a refusal in the course of his or her employment to perform services where an object thereof is to force ASF and SCS, or any other person, to cease doing business with Titan Concrete, Inc. (Titan).

WE WILL NOT picket, threaten to picket, or in any other manner seek to restrain or coerce SCS, ASF, Mill Creek Residential Corporation (Mill Creek), GFX Site Development (GFX), SYP Industries (SYP), or any other person engaged in commerce or in an industry affecting commerce, where an object thereof is to force SCS, ASF, Mill Creek, GFX, SYP, or any other person, to cease doing business with Titan.

WE WILL NOT picket, threaten to picket, or in any other manner seek to restrain or coerce Titan where an object thereof is forcing or requiring Titan to recognize or bargain with us as the collective-bargaining representative of its employees or for the purpose of forcing or requiring employees of Titan to accept or select us as their collective-bargaining representative, where Titan has lawfully recognized United Service Workers Union, IUJAT, Local 339, or any other labor organization other than us, and a question concerning representation of said employees may not appropriately be raised under Section 9(c) of the Act

WE WILL NOT picket, threaten to picket, or in any other manner seek to restrain or coerce Titan where an object of such picketing is forcing or requiring Titan to recognize or bargain with us as the collective-bargaining representative of the employees of Titan at a time when we are not certified as such representative and where such picketing

has been conducted without a petition under Section 9(c) of the Act being filed within a reasonable period of time not to exceed 30 days from the start of such picketing.

WE WILL NOT in any like or related manner restrain or coerce you in the exercise of your rights listed above.

TEAMSTERS LOCAL 456, INTERNATIONAL BROTHERHOOD OF TEAMSTERS

The Board's decision can be found at www.nlr.gov/case/02-CP-189159 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.

